

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
) DISMISSAL AND
 MUR 6822) CASE CLOSURE UNDER THE
) ENFORCEMENT PRIORITY
 Ratcliffe for Congress)
) SYSTEM
 and Betsy Roe, as treasurer) CELA
 Johnny Morgan Jackson)
)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6822 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Ratcliffe for Congress and Betsy Roe, in her official capacity as treasurer, (the "Committee") and Johnny Morgan Jackson violated either the Act or Commission regulations.²

¹ The EPS rating information is as follows: Complaint Filed: May 16, 2014. Response from Ratcliffe for Congress Filed: June 11, 2014; Response from Johnny Morgan Jackson Filed: July 14, 2014.

² Ratcliffe for Congress was the principal campaign committee for John L. Ratcliffe, a 2014 candidate for Texas's 4th Congressional District seat. No candidate won a majority of votes in the 2014 Republican Party Primary election held on March 4, 2014, resulting in a primary runoff election. See http://elections.sos.state.tx.us/elchist169_state.htm. Ratcliffe defeated incumbent Congressman Ralph Hall in the 2014 Republican Party Primary Runoff election on May 27, 2014, and subsequently ran unopposed in the general election. See http://elections.sos.state.tx.us/elchist173_state.htm.

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1 Complainant Ken Dickson alleges that the Committee reported receiving \$5,000 in
2 contributions from Naomi Jackson on January 13, 2014.³ However, Naomi Jackson died in 2008.
3 Compl. at 1. The Complaint attached Ms. Jackson's obituary and an excerpt from the relevant
4 Committee report showing one of the contributions attributed to Naomi Jackson.⁴ *Id.* at 3-4.

5 The Committee acknowledges that it accepted a \$10,000 check from a joint account in the
6 names of Johnny and Naomi Jackson, and that it attributed contributions to Naomi Jackson.
7 Committee Resp. at 1. The Committee asserts that it received the check from the Jacksons' son-in-
8 law "who instructed the Committee of his in-laws' desire to have the funds attributed evenly
9 between the primary and primary runoff elections (should it be required)." *Id.* The Committee
10 Response included a copy of the check, signed by Johnny Jackson. *Id.* at 2. The Committee claims
11 that at the time it received the check, it believed that Naomi Jackson was alive, and it only
12 discovered that she had died when it read the Complaint. *Id.* at 1. The Committee notes that it
13 immediately verified Ms. Jackson's death and refunded to Mr. Jackson the amount improperly
14 attributed to his wife. *Id.* The Committee attached a copy of the refund check.⁵ *Id.* at 3.

15 Johnny Jackson's response acknowledges that he wrote a \$10,000 check to Ratcliffe's
16 campaign from a joint account he has maintained "for 20 years." Jackson Response at 1. Jackson
17 states that the Committee asked him several months later to confirm his wife's death, and he did so.
18 *Id.* Jackson states that the Committee informed him that it had attributed a portion of the
19 contribution to his wife, and it refunded that portion to him. *Id.* Jackson attached copies of the

³ Michele Ratcliffe was treasurer of the Committee at the time of Jackson's contribution. On December 30, 2014, the Committee filed an amended Statement of Organization naming Betsy Roe as treasurer.

⁴ See Ratcliffe for Congress 2014 12-Day Pre-Primary Report at 9, filed February 20, 2014. Available at <http://docquery.fec.gov/pdf/214/14940533214/14940533214.pdf>.

⁵ The Committee reported the refund to Jackson in its next report. See Ratcliffe for Congress 2014 July Quarterly Report at 60, filed July 15, 2014. Available at <http://docquery.fec.gov/pdf/216/14961586216/14961586216.pdf>.

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1 contribution and refund checks. *Id.* at 2-3. He does not explain why he believed he could
2 individually contribute \$10,000 to Ratcliffe.

3 In 2014, an individual was limited to making \$2,600 in contributions, per election, to any
4 candidate. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(b)(1)(i)-(ii).⁶ Further, candidate
5 committees are prohibited from knowingly accepting contributions in excess of these limitations.
6 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

7 If a committee accepts contributions that exceed the contribution limits, its treasurer shall
8 either refund the excessive contributions or seek redesignation⁷ or reattribution within sixty days.
9 11 C.F.R. § 103.3(b)(3). If a redesignation or reattribution is not obtained, the treasurer shall, within
10 sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. *Id.*
11 Also, if a committee discovers that a contribution is prohibited, based on evidence which was not
12 available to the committee when the contribution was deposited, the committee must refund the
13 contribution within 30 days of discovery. 11 C.F.R. § 103.3(b)(2).

14 If a contribution made by more than one person does not indicate the amount to be attributed
15 to each contributor, the contribution shall be attributed equally to each contributor. 11 C.F.R.
16 § 110.1(k)(2). When an excessive contribution is made by check that has more than one individual's
17 name on it, but only has one signature, the permissible portion will be attributed to the signer and the
18 excessive portion may be attributed to the other individual whose name is printed on the check,

⁶ See also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02 (February 6, 2013).

⁷ If a contribution exceeds the relevant limitation and was not designated in writing for a particular election, the committee's treasurer may request a written redesignation of the contribution from the contributor for a different election. 11 C.F.R. § 110.1(b)(5)(i)(C). The treasurer may treat all or part of the amount of a contribution that exceeds the contribution limit as made with respect to the general election, with certain provisions, including, *inter alia*, the contribution must have been made before the primary election, and was not designated for a particular election. 11 C.F.R. § 110.1(b)(5)(ii)(B). The treasurer is also required to notify the contributor of the amount that was redesignated and that the contributor may request a refund. *Id.* The notice to the contributor regarding redesignation must be sent within 60 days of the receipt of the contribution; otherwise, the excessive contribution must be refunded. *Id.*

1 without obtaining a second signature. 11 C.F.R. § 110.1(k)(3)(ii)(B)(1). This may be done so long
2 as the reattribution does not cause the other contributor to exceed any contribution limit.⁸ *Id.*
3 Political committees employing this attribution presumption must notify all contributors by written
4 method within sixty days of the committee treasurer's receipt of the check. 11 C.F.R.

5 §§ 110.1(k)(3)(ii)(B)(2)-(3). At the time of notification, the committee must also offer the
6 contributor who signed the check a refund of the excessive portion. *Id.*

7 Johnny Jackson made an excessive contribution by contributing \$10,000 to the Committee.
8 Even though there is some information that Jackson told his son-in-law to inform the Committee he
9 wanted the funds to be divided among the primary and primary runoff elections, the contribution
10 would still have exceeded his contribution limits by \$2,200.⁹ While it does not excuse his violation,
11 it is possible that Mr. Jackson may not have understood that this contribution was excessive, as the
12 Commission's records show that this \$10,000 contribution is the first he ever made. Further, it
13 appears the Committee refunded the excessive portion soon after discovering that Ms. Jackson had
14 died. Also, there is some information that the Committee believed it was authorized to redesignate
15 the contribution among elections, as needed, and that it did not know that Ms. Jackson was dead at
16 the time Mr. Jackson made the contribution.¹⁰ On the other hand, there is no information that the
17 Committee sought written permission from the Jacksons to reattribute or redesignate the apparently
18 excessive contribution, as required by 11 C.F.R. § 103.3(b)(3).

⁸ See also Contributions Brochure, *Presumptive Reattributions*,
http://www.fec.gov/pages/brochures/contrib.shtml#Presumptive_Reattributions.

⁹ Because Naomi Jackson was deceased, all of the \$10,000 contribution must be attributed to Johnny Jackson. Ratcliffe was a candidate in three elections in 2014: the primary, primary runoff, and general elections. In 2014, the limitation on individual contributions was \$2,600 per election, thus Johnny Jackson was permitted to contribute a total of \$7,800 (\$2,600 x 3 elections). Therefore, his \$10,000 contribution exceeded the limitations by \$2,200.

¹⁰ A committee is required to properly identify individuals contributing over \$200 per election cycle. 52 U.S.C. § 30104(b)(3)(A). The Committee states that it believed Ms. Jackson to be alive when it filed its 2014 12-Day Pre-Primary Report, and as a result misidentified her as a contributor.

1 In light of these circumstances, the small amount at issue, the remedial action taken by the
2 Committee in refunding the excessive portion of the contribution, and in furtherance of the
3 Commission's priorities relative to other matters pending on the Enforcement docket, the Office of
4 General Counsel believes that the Commission should exercise its prosecutorial discretion and
5 dismiss the allegation that Johnny Morgan Jackson violated 52 U.S.C. § 30116(a)(1)(A) and
6 11 C.F.R. §§ 110.1(b)(1)(i)-(ii), and dismiss the allegation that Ratcliffe for Congress and Betsy
7 Roe, in her official capacity as treasurer, violated 52 U.S.C. §§ 30104(b)(3)(A) and 30116(f), and
8 11 C.F.R. §§ 110.9, 103.3(b), 110.1(b)(5), and 110.1(k), pursuant to *Heckler v. Chaney*, 470 U.S.
9 821 (1985). The Office of General Counsel also recommends that the Commission approve the
10 attached Factual and Legal Analyses and the appropriate letters, and close the file.

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12 **RECOMMENDATIONS**
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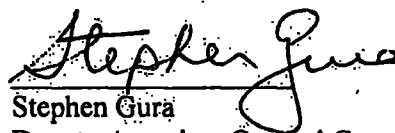
- 14 1. Dismiss the allegation that Johnny Morgan Jackson violated 52 U.S.C. § 30116(a)(1)(A)
15 and 11 C.F.R. §§ 110.1(b)(1)(i)-(ii);
16
17 2. Dismiss the allegation that Ratcliffe for Congress and Betsy Roe, in her official capacity
18 as treasurer, violated 52 U.S.C. §§ 30104(b)(3)(A) and 30116(f), and 11 C.F.R. §§ 110.9,
19 103.3(b), 110.1(b)(5), and 110.1(k);
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21 3. Approve the attached Factual and Legal Analyses and the appropriate letters; and
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23 4. Close the file.
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34 5.2.16
35 Date

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